

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

* * * * *		CRIMINAL ACTION
UNITED STATES OF AMERICA	*	13-043S
	*	
VS.	*	JANUARY 22, 2014
	*	
GERALD SILVA	*	PROVIDENCE, RI
* * * * *	*	

HEARD BEFORE THE HONORABLE WILLIAM E. SMITH
CHIEF JUDGE
(Defendant's Motions in Limine)

VOLUME I

REDACTED

APPEARANCES:

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<u>WITNESS</u>	<u>I N D E X</u>	<u>PAGE</u>
JOHN ROBERT LEO		
Direct Examination by Mr. Mann:		9
Cross Examination by Mr. Donnelly:		44
Redirect Examination by Mr. Mann:		67
<u>GOVERNMENT EXHIBITS</u>	<u>ID</u>	<u>FULL</u>
A-D -	49	50
<u>DEFENDANT'S EXHIBITS</u>		
1-5 -		9

1 22 JANUARY 2014 -- 2:05 P.M.

2 THE COURT: Good afternoon. This is the United
3 States versus Gerald Silva. We're here on Defendant's
4 three motions, a motion in limine with respect to a
5 proposed expert, a motion to dismiss on the basis of
6 constitutional vagueness, and a motion to dismiss Count
7 VII because certain material was not presented to the
8 grand jury.

9 So let's begin by having counsel identify
10 themselves for the record, beginning with the
11 Government.

12 MR. DONNELLY: Good afternoon, your Honor.
13 Terrence Donnelly for the United States.

14 MR. MANN: Good afternoon. Robert Mann for
15 Mr. Silva.

16 THE COURT: Thank you.

17 So how would you like to proceed? Mr. Mann, I
18 guess these are all your motions. Do you want to go
19 first and how would you like to take them?

20 MR. MANN: I'd like to do the motion in limine
21 because Professor Leo is here, Judge.

22 THE COURT: All right.

23 MR. MANN: And that way we can get him on the
24 stand.

25 THE COURT: Sure. Tell me before you put him on

1 the stand what you intend to do with his testimony.

2 MR. MANN: For the trial or for this afternoon?

3 THE COURT: For this afternoon.

4 MR. MANN: I have submitted to the Government
5 and really the Court has it too as an attachment, a
6 summary of what I anticipate his testimony will be at
7 the trial.

8 I can tell the Court that since we submitted
9 that, he had completed his review. There were a few
10 videos he has not yet reviewed. He will testify that
11 when he viewed those remaining videos, which happened
12 to be yesterday afternoon, none of that changed any of
13 his opinions.

14 I'll go through his curriculum vitae quickly. I
15 just gave the Government what I would think of as a
16 slightly updated and slightly different curriculum
17 vitae. I'll move to introduce both of those to
18 establish his credentials.

19 The one thing he can amplify of what the summary
20 of his testimony will be, but it will be more in the
21 nature of amplification from what I submitted. But the
22 one additional area which I think is significant is
23 this. The question before the Court now is why allow
24 an expert to testify. And I intend -- and obviously,
25 these would not be questions that would go before the

1 jury, but I intend to ask him some questions about his
2 experience teaching film and what he learned from those
3 experiences. And what I expect him to say is that --
4 and I should note he's in the room. If the Court wants
5 him to leave --

6 THE COURT: No. That's fine.

7 MR. MANN: What I expect him to say is that he's
8 learned from teaching film courses that people see
9 films differently after they've had an introduction
10 into sort of the techniques, the nature of film, that
11 students miss stuff in the beginning. They have a
12 whole different appreciation of the film experience
13 after they've had some instruction on it, Judge.

14 THE COURT: I don't want to cut you off, but I'm
15 wondering if we can't cut through a lot of this and
16 really get -- and maybe make this a little more
17 efficient. And what I'm suggesting is I'm not sure the
18 Government is objecting to Professor Leo's
19 qualifications for what his area of expertise is. I
20 think that the Government's argument is more focused on
21 whether it is appropriate to have an expert or not in a
22 case like this.

23 So I'm thinking we can cut through all the
24 qualifications and that sort of stuff.

25 Is that right, Mr. Donnelly?

1 MR. DONNELLY: In part, your Honor. As far as
2 Professor Leo's qualifications goes, the Government
3 acknowledges he's had a distinguished career at the
4 University of Rhode Island teaching English Literature
5 and then later in his career I guess branching out into
6 some kind of film studies.

7 So as far as his qualifications go, the
8 Government is not challenging the fact he had a
9 distinguished career along those lines. It's the fact
10 that his career has absolutely nothing to do that would
11 assist the jury in making the determinations it has to
12 make.

13 To the extent that his opinions would bear on
14 what the jury's job is, as I outlined in our memorandum
15 of law, he would be invading the province of the jury.
16 And I think that's where we're at with it.

17 THE COURT: That's argument. And I have some
18 real questions about the focus of the testimony. I
19 guess I'm wondering if we should have argument first, I
20 guess, is what I'm really wondering about the
21 appropriateness of expert testimony in this field.
22 Then, if I am inclined to think there may be some
23 appropriateness to it, then maybe we could have some
24 testimony directed to that. I guess that's what I'm
25 thinking. But if you feel that it would be a better

1 and more efficient presentation if you put him on first
2 and then we argued it, I'm open to that.

3 MR. MANN: What I would propose is sort of
4 half-way there. Quickly go over his credentials. I
5 have premarked as exhibits his two CV's, the summary of
6 the testimony that the Court and the Government already
7 have.

8 THE COURT: We can take all that in. I don't
9 think there would be any objection to that.

10 MR. MANN: But then I do think it would be
11 helpful for me to ask Professor Leo a few questions
12 almost directly at the point that seems to be in
13 contention, which is how can he help this jury
14 understand what's at issue, Judge.

15 THE COURT: Okay. I think I'm agreeing with
16 you. Let's do it. Let's get him on the stand.

17 MR. MANN: I'd call Professor Leo.

18 I might want to point out also, Judge, that I
19 did file a supplemental or a brief reply.

20 THE COURT: I reviewed it.

21 **JOHN ROBERT LEO, DEFENDANT'S WITNESS, SWORN**

22 THE CLERK: Please state your name and spell
23 your last name for the record.

24 THE WITNESS: My name is John Robert Leo. Last
25 name is L-E-O.

1 THE COURT: Good afternoon, Professor Leo. Just
2 keep that microphone pointed toward you.

3 And then Mr. Mann, you may proceed.

4 MR. MANN: To expedite the process, Judge, I
5 propose first five exhibits that I've premarked, the
6 two curriculum vitae of Professor Leo, one previously
7 submitted and an undated one; a summary of his
8 testimony, which has previously been marked; a set of
9 photographs of Calvin Klein ads, which has also been
10 previously submitted submissions to Court, and the
11 testimony before the Grand Jury that also has been
12 previously submitted in connection with several of the
13 motions.

14 THE COURT: Any objection to these exhibits.

15 MR. DONNELLY: Did you say five or four?

16 MR. MANN: Five because I gave one earlier.

17 MR. DONNELLY: Could I just ask Mr. Mann one
18 question about one I was just given?

19 THE COURT: Sure.

20 (Pause.)

21 MR. DONNELLY: Your Honor, in order to save
22 time, the Government has no objection to the first five
23 exhibits.

24 THE COURT: Thank you. The first five exhibits
25 will be admitted in full, 1 through 5.

1 (Defendant's Exhibits 1 through 5 admitted in
2 full.)

3 MR. MANN: The record can reflect on Exhibit 2
4 both on the Government's copy and the Court's copy I
5 corrected a typo of how long he had been at the
6 University of Rhode Island.

7 THE COURT: Okay. Thank you.

8 **DIRECT EXAMINATION BY MR. MANN**

9 Q. Professor Leo, let's -- how many film courses
10 would you estimate you've taught?

11 A. It's hard to say. Mainly because I have large
12 lectures and they're counted as two courses and the
13 Dean's Office has told me that I've probably taught
14 more student film classes than anybody else in the
15 university. So I would estimate for a 40-year career,
16 I have had over 5,000 students total. The reason I
17 know that is because I retired 40 years to the day
18 after I retired and I was given a list of all the
19 people I had had and courses.

20 Q. Now, were some of those courses introductory level
21 courses?

22 A. The course I taught, courses from introductory
23 level to I directed maybe six dissertations, Ph.D.
24 dissertations on film.

25 Q. And from teaching these courses, did you have

1 feedback with students about their experiences in your
2 courses?

3 A. I should mention, too, that courtesy of the State
4 Department and the Polish Government, I was a Fulbright
5 Distinguished Chair of American Studies and American
6 Literature in Poland for two years, and my courses
7 there were also in film, and I supervised theses there.

8 I really think URI does a lot for its students.
9 I was the first member of my family to have gone to
10 college.

11 Q. Can I just focus for a second, Professor Leo. Did
12 you in the course of teaching have interaction with the
13 students throughout the courses?

14 A. I didn't hear you.

15 Q. Did you have interaction with your students
16 throughout your courses?

17 A. You mean discussions?

18 Q. Yes.

19 A. Yes. A lot. It was expected of us to meet with
20 students on a regular basis and to have lunches with
21 them, do a lot things.

22 Q. Can you summarize for us what you taught in your
23 introductory film courses?

24 A. What I taught?

25 Q. What you taught. What were you teaching?

1 A. The main area that I taught and helped develop
2 curriculum was in genre, genre studies and that
3 included international film, that included the way
4 genres morphed and changed like *Star Wars* trilogy is
5 based on the Western in many respects, the formula.

6 Interaction would also occur when students were
7 preparing papers. Many of them were -- and also
8 especially applying to go on to grad school. I was an
9 advisor much of the time and you would talk to students
10 about a range of issues, why they were going to drop a
11 course, if they were going to drop from school mainly
12 because of personal family issues; whether or not they
13 should go on to school.

14 Some students also wanted to know if any
15 material was going to be controversial. And it's
16 surprising how many students have different kinds of
17 anxieties over films. Some people do not like violence
18 of any sort. They have a physical reaction. And it's
19 the rule of the University that if you have problematic
20 material or you have material that will be
21 controversial that you advise students in advance. As
22 a result, my syllabus, and it's de rigueur to have this
23 on every syllabus for almost all faculty that subject
24 matter in the course may not be appropriate for all
25 individuals. If you wish to not see a particular film,

1 et cetera, that is your decision.

2 Q. Now, did you teach the students in these
3 introductory courses certain things about how films
4 should be viewed, appreciated, how they're produced,
5 things like that?

6 A. It's interesting because after so many years of
7 teaching film, I know I have a reputation of having a
8 good sense of humor, that I show movies that offer
9 different kind of story-telling, narrative, mainly
10 international and that students feel challenged. They
11 know in advance that it's not a time for them to come
12 in, eat popcorn and just wave their hands at a screen.

13 Q. Give us some examples of what you talked to them
14 about the technique of film.

15 A. Okay. The first question I ask students when I've
16 shown a film, I ask them what did you see. That really
17 gives pause. And many of them will say, well, I saw
18 this happening. I say, well, yes. Somebody said,
19 well, I noticed this. There was an element of tension
20 because in the very first scenes there was something
21 ominous about the sound track. Or somebody would say,
22 I saw something that was in the background that kind of
23 bothered me. I thought maybe it was going to be a
24 clue.

25 Everybody comes to films with what I call visual

1 literacy. Probably most of us, if not all of us, our
2 first babysitters were televisions and we've grown up
3 knowing some of the grammar, what we call the grammar
4 of film, how gestures have a long history behind them.
5 How a camera works. A camera can be very, very tricky
6 in certain kinds of shots. Actually, I do this all the
7 time. Specific to a film, I'll have a list of things
8 that I want them to be on the look for. And this is
9 routine in any course. We call it viewing cues where
10 students are going to be in a Literature course, which
11 I also teach, we ask them to be aware, be mindful of
12 how certain kinds of things are happening. How do they
13 recognize suspense, for example, in a film. How can
14 you watch a film, say, by Hitchcock, who's known for
15 tricking his audiences, having little clues hidden that
16 people go for like a dog for a tree. But they're false
17 lures.

18 Some movies are going to have reversal of some
19 expectations. Some movies will also have surprises.
20 And moreover, the one thing that I think my students
21 get exposed to more in my courses than in many others
22 is that I have so much background in international film
23 and so I have students who see movies with subtitles
24 for the first time.

25 **Q.** Have you had feedback from students as they're

1 taking your courses on how their perception of film
2 changes?

3 A. Well, yes. One student, I had her in several
4 classes. She said her friends don't even like going to
5 the movies anymore with her because she knows how
6 they're working, and they'll go out maybe for a beer or
7 something afterwards and she's almost ruined their
8 viewing experience because she's told them where it
9 could have been better.

10 Q. Have students told you that how they perceive
11 movies has changed as a result of what they've learned
12 in your course?

13 A. Some students have a large background. Many of my
14 students also make films. One of my best students got
15 a junior nomination for an Oscar in Category 1 and
16 that's unheard of. He was 29. The students that seem
17 to be affected most by films are those who have not
18 gotten out of the box. They have maybe never seen a
19 Western. They've never seen an international film.
20 Some of them are -- and of course, they are inevitably
21 surprised and most of the time for the better. They
22 say, I had no idea that this kind of film had been
23 made.

24 Every time I've taught comedy genre mixed with a
25 comedy of gangster films, Marilyn Monroe and "Some Like

1 It Hot," which is such a funny film. Several things
2 happen to students over the years that I've taught that
3 film. For many of them, it's the first time they've
4 ever seen a black-and-white film through from start to
5 finish. And I'm used to the phrase now, "I didn't know
6 that they could comedy back then like that."

7 Q. Have you taught them things about how the camera
8 is used in a film?

9 A. This always comes as a surprise, because many
10 students who are not interested in the technology of
11 the techniques of filmmaking, they expect that it will
12 be dull. They are self-surprised when they get the
13 knack. Pretty soon they're showing us, they're showing
14 me how to look at something new because they are so
15 aware of how a camera and lighting operate so many
16 meanings in the film.

17 The biggest obstacle that I have to face and
18 anybody who's teaching film or for that matter
19 literature courses is when you ask what's the film
20 about, many students at first will give you a plot
21 summary. No. That's not what this movie is about.
22 Why don't you tell me how you think the lighting is
23 working in this film. And then they start to think how
24 does a camera action help structure your feelings and
25 your sense of interpretation.

1 For example, a camera may track something, track
2 somebody, and it will come in for a zoom or pull away.
3 When it comes in for a zoom, maybe you see something
4 going on that the camera wants you to see but you would
5 not have noticed but the camera can highlight it.

6 There's also things like lighting, top lighting.
7 Lighting can be used in a dramatic kind of way as well.
8 And music, soundtracks. One director famously said
9 once, "In a film, the music always knows what's going
10 to happen next."

11 So students learn how to adjust the rates of
12 what they're seeing, the levels of how they're
13 understanding is incrementally being guided and
14 structured. Or trouble. I mean, they can have
15 expectations overturned in the process of viewing.

16 After they get a hang of it, they become really
17 in their own way experts. They are so aware of what we
18 call cinematography, how color can work and/or not
19 work, and how other kinds of foreshadowing or
20 foregrounding, other ways of giving hints of a memory
21 that's being repressed. All of these can be done not
22 necessarily through narrative and/or talking or
23 interaction for that matter. It can be done by a look
24 or things can be done suggestively again with editing.
25 Somebody hears something and they drop something and

1 then the camera goes right away to the floor, and you
2 know you're being manipulated, you know you're being
3 jerked around but then that's part of the experience of
4 seeing a film and to understand that you're giving
5 yourself to the activity of seeing a story being told
6 and that you've become part of the participation of the
7 meaning.

8 **Q.** Is one of the things that you teach about how
9 things like implements and objects are used in the
10 production of a film?

11 **A.** Not only in film. The comedy, comedy central in
12 theater and in history of specific genres people are
13 given a prop. That's the technical term, a prop. And
14 you spontaneously start doing something with that prop.
15 And it's a way that actors can show their imagination
16 on display with spontaneity. I've seen people who are
17 just aces. Give them a hat, and at the end of three
18 minutes they have done so many things with that hat it
19 should stretch the imagination, and it does.

20 Some people can do unbelievable things with a
21 chair. Especially -- I was in Europe and I saw
22 somebody in this kind of exercise given a chair and
23 this person was also a gymnast, and it brought down the
24 house what he could do on a single chair.

25 So props can be measures of invention. They can

1 move a plot. They can create tension. An object or
2 say like tape or a ukulele, or as I mentioned a hat,
3 there's -- you can turn it into a way of altering a
4 variety of characters. If you have a hat, for example,
5 you can put it on one kind of way, you can mock it, you
6 can drill it in your hands. You can be campy. You can
7 turn it into an object of derision. You can hold it in
8 front of you and just start making faces at it.

9 **Q.** Now, in your experience, do students improve their
10 appreciation of these types of things as they study
11 them in your courses?

12 **A.** I can't think maybe a tiny handful of people who
13 do not walk out -- not only in my film courses but --
14 and I was Chair for three years of the Film Studies
15 program at URI. And during that period, the major grew
16 three-fold. It was the most popular major. It got
17 lots of people changing major. It's an unbelievable
18 double major as well. Some people come to film study
19 with different motivations. Many of them are wanting
20 to just get more background, more savvy with the
21 different kind of pictorial styles, the different kinds
22 of ways telling a story which is manifested through
23 especially in Europe and Chinese film-making. There's
24 also people who enjoy courses like film because they
25 literally make them see the world differently.

1 Film is justifiably called the most popular art
2 in history. Film is the most popular art on the
3 planet. Just as one example, India is the world's
4 second largest filmmaker, its market audience
5 guaranteed is 60 million. It's southeast Asia. So
6 film -- just one thing I believe, and I think most
7 people in the University do, too, it's the one medium
8 that regardless of nationality, regardless of
9 background or situation, it's one medium, despite
10 different vernaculars, different ways of working with
11 style and even equipment that everybody on this planet
12 has in common.

13 Q. And do students improve their ability to
14 appreciate film when they learn about some of the
15 different things you describe?

16 A. You know, one of the things that astonished me, it
17 never stopped astonishing me and it always made me
18 happy was how many times how many students would often
19 say that they see film absolutely differently, that it
20 has changed the way that they experience the meaning of
21 their lives. They're much more tuned in to things like
22 visual literacy as well as film literacy. They're so
23 aware of how, say, a political campaign can be staged.
24 They understand how acting and how elements can be
25 juxtaposed to blowup certain kinds of meanings. They

1 can get that just by watching the film *Citizen Kane* as
2 well. That's one thing they learn.

3 THE COURT: Professor Leo, I have to interrupt
4 you a little bit. I'm enjoying your testimony a lot
5 because I feel like I'm in a seminar on film, and I
6 like films, but we need to get through this process.
7 So what I need you to do is really focus on the
8 questions Mr. Mann is asking you and then try to answer
9 them as succinctly as you can because he's just on
10 background right now, and he hasn't even gotten to
11 anything that focuses on the proceeding before us, and
12 we only have a limited amount of time to do this. So
13 try to just listen carefully and answer succinctly, if
14 you could.

15 THE WITNESS: I will.

16 THE COURT: Okay. Thanks.

17 Q. Now, you reviewed all the video that are the basis
18 for the indictment in this case, didn't you?

19 A. Yes, in detail and took notes.

20 Q. And you have detailed notes as to all these
21 videos, don't you?

22 A. I'm sorry?

23 Q. You have detailed notes as to what you viewed; is
24 that fair to say?

25 A. I didn't --

1 Q. You have detailed notes?

2 A. Yes.

3 Q. Can you give us some examples of how the technical
4 aspects of film that you discuss enhance your
5 understanding of the films that you viewed utilizing
6 the things you just covered in terms of what you teach
7 your students.

8 A. I'll give one example that is -- it's a light
9 motif from one video to another. It's maybe the most
10 common one. The scenes that involve eating, they
11 exhibit everything that I've been talking about.
12 There'll be a long shot. There might be a shot
13 establishing a setting and you'll get close-ups and you
14 get the activity of how significant, say, an extreme
15 close-up can be. A kid will be eating and it's
16 mocking, the camera is catching all that. They're just
17 kind of shoving food into their mouths, and the camera
18 comes in on a slow zoom more than once on people. The
19 face fills the entire frame, and you see food and drool
20 just coming out of their mouths and the kids are
21 frequently just doing this on purpose. They're hamming
22 it up. And the activity of the camera because it can
23 go, it can also give you reactions to that scene with
24 some of the other boys that are operating in it. But
25 that food shows what is done with food. It's almost

1 like a prop itself.

2 **Q.** Were there scenes where the use of objects
3 enhanced your understanding of what was going on?

4 **A.** One of the most notable examples that grabbed my
5 attention was about a half dozen of the boys were in a
6 setting in the woods and they started pulling out
7 equipment, looked like wooden swords that had aluminum
8 foil wrapped around them. They also then would just
9 start getting into what I would just call horseplay,
10 mock sword fights and mocking postures that seem to be
11 coming right out of a film about the Middle Ages.

12 Maybe an even more significant thing that they
13 could do would be with balloons. There were so many
14 scenes where they would be jumping in and out of a pool
15 and they would have balloons and they would just fill
16 them up with water or just blow them up, then they'd
17 see something else and they'd grab something else and
18 they'd be tossing it. These were everyday things that
19 you would find around a pool. Something that would
20 float and they turned it into an object of spontaneous
21 play and they seemed to be inventing the rules of the
22 game as that went on.

23 **Q.** Did you make any notes about how -- first, did you
24 observe who the actors were in these films? They were
25 mostly young boys, weren't they?

1 A. Yes. In fact, in that one part where they were
2 speaking -- sounded more Russian to me than Ukrainian,
3 they were asked their ages. And one said (speaks
4 Russian) meaning 12. So they ranged in age. I would
5 say the youngest would be probably around 5 or 6 and
6 the oldest I would think 16, and this is taking into
7 account that the muscle mass in Central and Eastern
8 Europe is a little bit different than in other
9 countries.

10 Q. Did you see how these different actors interacted
11 among themselves in some of these videos?

12 A. This was one thing that surprised me. For one
13 thing, most of the boys were -- they weren't all in the
14 same videos, but they had the characteristic of what we
15 would call ensemble acting. They knew each other.
16 Their interaction to me, no matter what the setting,
17 for example, one movie had four boys in a cabin or in a
18 room in a train. And they are just spontaneously doing
19 things like playing Patty-Cake Polka or
20 rock-covers-stone or scissors-cuts-papers. And they'll
21 do other kinds of hand games that they're working
22 really, really fast. Other times I would notice that
23 some of the older guys were showing some of the younger
24 ones how to jump into this pool, sauna, actually. The
25 whole setting was a sauna. And a genuine sense of

1 caring. I was really struck even in the horseplay how
2 much they were laughing, and this was not rehearsed.
3 You could see -- and the camera is going everywhere
4 just trying to follow them.

5 They would also interact gymnastically. I was
6 astonished at their level of gymnastical skills. They
7 could do things that you would expect to see young kids
8 doing, although semi-professionally, and these would be
9 at the beach. And again, they would interact. There
10 would be some games, some activities called for more
11 contact or interplay.

12 **Q.** Did you observe -- were you able to observe from
13 the film work whether or not when the boys were
14 dressing and undressing, what the boys were looking at
15 when they were engaging in either dressing or
16 undressing?

17 **A.** That's an interesting question because there were
18 multiple scenes throughout all the videos when the boys
19 would be dressing and undressing, and I was struck that
20 they would be, for example, getting dressed and just
21 putting their clothes on. They wouldn't even be
22 looking at each other. They were so absolutely
23 non-self-conscious about disrobing, period. And for
24 that matter, I was also struck by how -- there was no
25 visual cruising among the kids themselves. There was

1 simply nothing going on that was outside of horseplay.
2 They weren't hitting on each other. There was no
3 seducing. There was nothing indicating any
4 sexualization of any actions that I could see. And
5 there was a lot of interaction, but it was always play
6 and sometimes very skillful play.

7 I want to go a little bit farther. The one time
8 that there was an undressing and a dressing scene had
9 me laughing because it was so campy. These guys also
10 showed the use of props. There were some beads around
11 there so they were putting on beads. They were doing
12 little girly things. They were spoofing something like
13 drag queens. They would be making hand gestures, like
14 that, and exaggerating -- a parody, actually, of
15 feminine gestures in movement. And in that one and the
16 same time, they were mocking themselves. They'd be
17 looking at each other, pointing, laughing.

18 The one thing that struck me in those kinds of
19 scenes was that they were so self-consciously aware of
20 acting. They were performing in those kind of what I
21 would call little boy drag scenes. And they were
22 whooping it up. They were laughing.

23 Q. Do you teach your students about settings?

24 A. About what?

25 Q. Settings for film?

1 A. Settings are the foundation of -- what is one of
2 the anchors in any kind of film study is something
3 that's called the Mise-en Scent, the structure of a
4 setting because everything has to be just so. It has
5 to be precise. It will emphasize the spacial relations
6 of the actors, the characters in that scene, and it can
7 also become very dramatic in its own way.

8 The settings were interior. They were exterior.

9 Q. Let me interrupt for a second. Are you now
10 talking about the settings in the movies that you
11 reviewed?

12 A. Yes.

13 Q. Can you tell us about how those settings informed
14 your interpretation of the films?

15 A. Generally and across the board, settings were
16 either interior or exterior. They were either inside
17 what appeared to be an apartment or a sauna. The
18 reason you could see that is that when there would be
19 scene changes, the camera would track some of the boys,
20 and I was realizing the architectural nature of the
21 sauna. There were showers, there was a pool, there was
22 a recreation area with couches and different activities
23 would go, and sometimes there would be a little bit of
24 an overlap. On the left-hand side of the frame, you
25 might see some of the guys in the pool and the shot was

1 shot in such a way that you could see the hallway on
2 the right rear entryway into the showers and at the far
3 end of the hallway was what I would call a recreation
4 room.

5 So the settings created a fluidity for
6 spacializing different activities and movement, and
7 also they could become the occasion for maybe a
8 ten-minute scene where they were just wrestling around
9 like tying each other up. And it's all spontaneous.
10 They're horseplaying. They're throwing things at each
11 other. And one of them was sitting there just trying
12 to watch TV.

13 Q. Did you notice whether the settings were in public
14 or private places?

15 A. The other settings were exterior, what I would
16 call the exterior ones, I would say 50 percent --
17 probably like 80 percent of those were urban. They
18 were outside in, say, small parks and/or on the street.
19 One looked like it was almost like a playground that
20 was encased with a wooden fence in a meadow. It was
21 hard to say whether that was a larger park in a city or
22 maybe on the outskirts of town.

23 The urban shots were extraordinary. The guys
24 would ham it up even walking. A camera would be
25 looking at them coming towards you, and there would be

1 another camera tracking them from behind and that would
2 be something that would strike an observer when you're
3 watching a film and you see this group of boys walking
4 towards you, it's not an unusual kind of way to set up
5 a shot but it emphasizes the nature of the street,
6 because the street is now creating a -- guys are at an
7 angle like a football scene. They're like a wedge.

8 The beach scenes, there were many, many beach
9 scenes. And one scene was at an amusement park, but it
10 was a sizable one. And what struck me is that these
11 were all public venues. The one that was inside of a
12 fairly large aquaplex, the pool was an olympic size
13 pool with three diving boards, diving spots. And the
14 guys would be -- and those were some complex scenes,
15 too, because there would be activity going on in front
16 of you on the side of the pool and in the background
17 probably at least 50, 60 feet away there would be the
18 boys jumping off -- some of the boys jumping off
19 different heights of the diving boards.

20 The other scenes, there was one in a park, and
21 also in the same pool scenes, by the way, people were
22 walking publicly by them. The guys might be doing
23 something and people, adults were just walking by
24 indifferently. I mean, it's like they weren't there.

25 And the same with some of the other scenes where

1 they were on an outdoor pool in a park, and there would
2 be all kinds of people, families, et cetera, around
3 them. You saw a lot of families with kids.

4 And the other exterior scenes, some were more
5 isolated, very beautiful beaches. That was one thing
6 that was given as a disclaimer for all the films, that
7 you could see naturalism in performance at some of the
8 most beautiful beaches in Ukraine and other places in
9 Eastern Europe.

10 Finally, there was one park scene and the camera
11 was on outside of the park for the most part. And
12 there was a grill. I was just dumbfounded. It was one
13 of the most skillful demonstrations of just spontaneous
14 what I would call gymnastics. Their sense of balance.
15 I saw one hopping backwards. There was a big rubber
16 tire in one of these playgrounds, and this guy stepped
17 -- he'd have one foot on one part and he'd jump back
18 and landed perfectly balanced on his other foot on the
19 other side of the tire. And he jumped not looking
20 back, not looking over his shoulder. He jumped and
21 hopped backwards.

22 I've had therapy for vertigo and that's one
23 thing that you can get very dizzy on even if you don't
24 have a spinning brain. Keeping agility and which was
25 on exhibit all the time.

1 Q. You've studied a lot of films that have some
2 sexual content; is that fair to say?

3 A. Yeah. Let's see.

4 Q. We don't need a list for this hearing.

5 A. Oh, I remember --

6 Q. Professor Leo, we don't need a list for this
7 hearing. Okay?

8 A. Okay.

9 Q. Let me just turn to my question now. Okay?

10 A. Yes. I saw my first films when I was a kid.

11 Q. Let me turn to a question now based on that.

12 Did you observe in the films that you viewed --
13 we're always talking about these videos that are the
14 basis of this indictment. Did you observe whether or
15 not -- you used the word "cruising." First let's
16 define "cruising." What did you mean when you used the
17 word "cruising"?

18 A. Cruising is more like a gay slang term but it's
19 used in all kinds of -- cruising is when somebody seems
20 to be out looking to hit on somebody or to make
21 contact, maybe pick somebody up. So it's not strictly
22 something that exists in a kind of gay culture. It's
23 common.

24 Q. And you said you didn't see cruising, right?

25 A. There was none. And I was on the watch. I mean,

1 I was looking to see any kind of any activity that
2 could be described as sexualized or having a sexual
3 outcome as the intent of that action. There was no
4 flirting. If anything, all you saw were these hammy,
5 cheesy, laughing kids playing. And the closest thing
6 that would even resemble something, paying attention to
7 say a butt, would be to hit somebody with a towel, and
8 that's not sex. That's not seduction. There was
9 virtually not anything that I would call having a
10 sexual motivation or expectation.

11 Q. Did you observe -- let me back up.

12 You've talked a little bit about the angle of a
13 camera. What is the importance of the angle of the
14 camera?

15 A. There's so much power in how a camera and how a
16 frame can be shot and the position of the camera. It's
17 common in film if you have a camera at a low angle and
18 you're filming a body, the body looks large. It looks
19 monumental. And that's frequent. Hitler knew that
20 when the Olympics were filmed.

21 The camera angles sometimes were tilted and they
22 would be tilted on tracking. And that sometimes would
23 go on especially where there was activity that was
24 requiring a lot of movement, what I call the constant
25 horsing around.

1 Q. How was the angle important to your understanding
2 of these films?

3 A. It was important because it -- imagine what I
4 mean. This would be the frame. A frame fills the
5 space that you see on the screen. When the camera is
6 pulled back, you see a lot of the action and that
7 allows you to see -- and if the boys are moving, the
8 camera can track them going around, if they're going in
9 a circular way. The camera can go in on a zoom so you
10 can see close-up how they might be wrestling or pushing
11 or playing with something, working with a prop.

12 And also in some of the -- in the food scenes,
13 the camera could also get down -- well, one of the food
14 scenes had one of the fellows just doing things that
15 were just, you know, third grade gross with cupcakes,
16 stick them on his head. He would put cupcakes on his
17 chest, on his legs. And on one occasion -- not one
18 occasion, several times put one or more cupcakes on the
19 seat of a bicycle, and then he would try and sit on the
20 seat of the bicycle. And all the other guys are just
21 laughing. He was also on the ground rolling in some of
22 the cupcakes. So the camera got down low and so you
23 could see -- actually, if anybody else is like me,
24 wanting to roll around in sticky frosting is not my
25 idea of wanting to have a time to laugh. That's what

1 they would be doing, just rolling around and in a
2 grossly funny juvenile kind of way turning their bodies
3 into objects of humor and derision for each other, and
4 the camera was catching that. The camera would come in
5 on these cupcake scenes and you saw the body, chocolate
6 and frosting close-up.

7 Q. Does your study in film include studying what the
8 role of the audience is in the film?

9 A. That is one of the biggest things in the study of
10 film. I've been asked, well, what goes on in film
11 studies. You learn genre, you learn different kinds of
12 things about lighting, camera work and stuff, but you
13 also start paying attention to the nature of your
14 audience and you are -- and you realize that you're
15 going to be playing, maybe, I would imagine that, I'm
16 thinking of different kinds of films, anybody who's
17 making a film the whole genre of children's films,
18 Disney, et cetera, how do you imagine an audience?
19 What is the age level that you're targeting to be
20 impressed by this particular film?

21 Q. Did you see in these film that you viewed how the
22 camera was taking into account the audience?

23 A. Taking into account what?

24 Q. Did you see in the films that you viewed how the
25 camera took into account the audience?

1 A. Yes. Yes. One was that phalanx shot that I've
2 already described where the kids are coming towards
3 you. That is -- in film parlance, that is like a
4 direct invasion of audience space. Not invasion in a
5 hostile kind of way, but it would be that they know
6 that the effect of that shot will have an audience
7 going like this, or that it's something that in terms
8 of movie seeing there will be a physiology attached to
9 that kind of scene and you're going to be reacting to
10 that kind of activity.

11 Another way that audiences have to be imagined,
12 especially in international filmmaking, are the
13 demographics, what age groups. Are there certain
14 story-telling traditions that might be more relevant to
15 one national film culture as opposed to another. There
16 might be different ways in which certain kinds of
17 scenes have resonance because they're used more
18 commonly in certain kinds of story-telling methods.
19 Audiences are just an incredible part of film studies.

20 Q. Is there anything else in particular that you want
21 to remark on that informed you about your understanding
22 of these films?

23 A. May I take a look at my notes? I have all kinds
24 of things down here. I've already mentioned the
25 hamming up and the architectural role of some of the

1 settings, the parks. I guess the one big item that I
2 took away was the element of spontaneity, which is
3 awfully hard to sustain. And even if you have -- even
4 if you're told -- and this is not something that is
5 uncommon, especially if people are taking acting
6 courses. You say you have five minutes and in five
7 minutes I want you to do X number of moves three times,
8 and you go from this side of the room to that side of
9 the room. That might be a general instruction. The
10 ability to do something inventive in that kind of space
11 even with a general formula, you're going to do A, B
12 and C, I was struck time and again by the energy and
13 the relentless -- I mean, these kids would drop one
14 kind of activity in the same movie and immediately pick
15 up another prop and start doing something else. And
16 you can see when something is rehearsed and when it's
17 not. There wasn't rehearsal here. They might have
18 done something like this many times, but every time you
19 could see how unpredictable it was. And the reason I
20 can say that was, again, the use of the camera. The
21 camera can pull back and you can see different areas
22 that are constantly shifting, the distribution of the
23 boys across the frame within a setting, and then the
24 camera would then go in for a zoom so you'd have a
25 localization within the frame and you know that other

1 stuff is still going on. And their ability just to
2 change and to invent rules were astonishing. That's
3 the main thing I took away, the playfulness, the
4 inventiveness and the boysiness.

5 Q. You mentioned zooming. What is zooming?

6 A. A zoom shot -- it can be a slow zoom. Zoom is
7 when the camera comes in, it comes in close on a topic
8 or a subject. Maybe one way that it conveys a lot of
9 emotion is that when there's the close-up of a face.
10 That's considered intimate, that you have a close-up of
11 a face you're being given maybe an insight into the
12 psychology of that character. But a zoom is the camera
13 is active. It's taking your sight. It's forcibly
14 drawing your attention from one area to another, or
15 it's making you focussed on one area or another.

16 Q. Now, you observed in the films you saw nudity
17 including lots of boys penises and their pubic area,
18 right?

19 A. Yes.

20 Q. Did you observe zooming in focusing only on the
21 penile area or the pubic area?

22 A. No. I would not say that -- no, there was not
23 zooming that I can recall. In fact, there was very
24 little camera attention paid, period, to anything like
25 genitals or pubic area. At the most I saw, the most I

1 saw something resembling even that kind of attention
2 would be when the camera was panning. And a panning
3 shot is when a camera is going across a scene. It's
4 not stabilized. That would be a stationary shot. But
5 a camera is panning, and there might be activity going
6 on there. The camera might linger for a moment over
7 the buttocks but not zoom, not focus. It would go on.
8 But the camera would do that also to a face. There was
9 an equal distribution of a little slight slowing down
10 of the camera, but not many.

11 Q. Could I just show you, Professor, in the interest
12 of time, exhibit -- let me first show you exhibit --
13 I'll show you an exhibit about the Calvin Klein ad.
14 You've seen that before, haven't you?

15 A. Yes.

16 Q. How does that exhibit affect your understanding of
17 these films?

18 A. This -- first off --

19 Q. First, can you describe the exhibit very briefly,
20 just very briefly.

21 A. The first shot here?

22 Q. No. The whole exhibit.

23 A. This is such an item of common discussion in any
24 kind of film course, the role of bodies increasingly in
25 advertising, which is always in our faces. And it's a

1 truism in Advertising 101, sex sells. That's why you
2 see -- what do buxom women sitting or leaning over a
3 car have to do with a car? Nothing except the sale
4 price. Merchandise that moves because this is, again,
5 a truism. People want to have good feelings about
6 something and one way that you could have good feelings
7 about something is throw all kinds of bodies at
8 products. When you see people eating, late night ads
9 always are focused on food. Much of the time anyway.

10 But to go back to these, there wasn't one thing
11 I saw in these movies that was nearly as focused on the
12 sheer physical nature of bodies as I've seen in Calvin
13 Klein ads, which are almost jokes among men and women.
14 The Calvin Klein ads for ten years have been icons in
15 the gay world, gay iconography, Calvin Klein is a
16 staple, but a lot of women also are just struck by how
17 beautiful some of these men are. And they'll talk.

18 And even shopping bags. If anybody has seen
19 Abercrombie and Fitch, Abercrombie and Fitch would be
20 in some respects considered pornographic. One shopping
21 bag -- I mean, you see them in the mall, a male profile
22 and probably maybe early teens and the bottom of the
23 bag is just obviously a shaved pubic area because that
24 camera goes as far as it can without showing a penis.
25 And that's a shopping bag.

1 So that's a long way from -- has everybody seen
2 these? Should I hold any up?

3 **Q.** The Government has these, and the Court has these.

4 My question to you is, I think you've answered
5 it, if you talk about sexuality, how would you compare
6 the sexuality in the movies that you saw with the
7 sexuality in those pictures?

8 **A.** In these pictures, this is more like a film. He
9 is -- she's on her knees and he's sitting down, and
10 she's actually sitting on his crotch and they're
11 hugging. I would say this is -- you could call this a
12 sexual shot. It's certainly intended to be seen as
13 something that is appealing. It's something that
14 you're being invited to experience as imaginatively as
15 you can, the texture of these bodies as if you were in
16 either of those positions.

17 In terms of the films, there's nothing like
18 this. There's not -- these ads in some respects or
19 these pictures suggest intimacy. Here's one. They're
20 off balance. And you can see that it's Escape. And
21 it's the angle of that one means that it's inviting
22 them to fall down.

23 **Q.** Can you briefly describe the photograph you're
24 referring to for the record.

25 **A.** Yes.

1 Q. Can you just briefly describe it. Oh, it's the
2 one that's labeled "Escape."

3 A. Okay. This photograph of "Escape." The man has
4 his arm against the wall. They're tilted so the image
5 is already showing a state of imbalance. We would say
6 that what's implicit in this shot is more activity,
7 even if it means falling. The forces of gravity are
8 going to be at work here. They're between two walls,
9 and she's -- he's pushing to kind of hold up. The shot
10 here has him balancing his body while he's leaning
11 backwards, and she isn't holding onto anything except
12 him. So the impress of her body weight is on him. And
13 she's also prepared, they're both in a way almost going
14 to fall. It's going to be a hard position to sustain.

15 Q. Would it be fair to say, Professor Leo, that
16 you're now submitting the other pictures would be
17 somewhat similar except the facts would be different?

18 A. Yeah. Here's one.

19 Q. No. Professor Leo, all I'm asking is can you just
20 describe one picture as one having sexual messages?

21 A. Let's say that the picture is inviting to be seen
22 as a sexualized picture.

23 Q. My question to you is simply this. Would your
24 analysis of many of the other pictures be similar
25 except the actual poses would be a little bit

1 different?

2 A. Yes.

3 Q. That's all we really need on that, because I think
4 we really want to move on. Okay?

5 A. Let me just add this. Pictures of some are
6 seductive. In other words, there might be a single
7 person looking out at the viewer. And this would be
8 what I would call like a come-on shot. This one would
9 be I'd like to hit on you. This one. There's no
10 other person. Obsession. And she's looking, eyes
11 direct. And your eye would be eye-line with hers.

12 Q. Let me just briefly show you, there are two CVs
13 we've introduced. You prepared both of those and
14 they're accurate, aren't they?

15 A. Yes.

16 Q. We've made one correction. There's a document
17 called "Summary of Expert Testimony of John Leo."
18 You've seen this, right?

19 A. Yes.

20 Q. And in the interest of time, is this summary an
21 accurate summary? It doesn't include everything, but
22 it's an accurate summary of your testimony?

23 A. Yes. It's very accurate.

24 Q. Thank you. And you testified briefly you have
25 detailed notes of what you saw, right? You have

1 detailed notes of the videos you saw?

2 A. Yes.

3 Q. And with those detailed notes, could you provide a
4 description, I'm not asking you to give us the
5 description, but would you be able to give us a
6 description of the different videos and images that you
7 saw?

8 A. Yes.

9 Q. All I really need to know is if you could give
10 that description.

11 A. I can just show you very quickly that there are a
12 lot of notes, and some of the films --

13 Q. I think all we need to know is if you could do
14 that. Okay?

15 A. Well, we tracked some of them so we knew exactly
16 where we were in the running time. Others we couldn't.

17 Q. I don't think we need to go through the whole
18 description right now.

19 THE COURT: No. I don't think we do.

20 MR. MANN: Unless the Court wants more for the
21 record, I think I've established what the testimony
22 would be, Judge. We haven't gone through chapter and
23 verse of the summary obviously. It includes all his
24 opinions. I can go through all of that with the Court,
25 but it seems to me it's in the record right now. If

1 the Court wants to give me the time, I'm happy to go
2 through it.

3 THE COURT: Well, you're in control of the
4 presentation so I want you to do what you feel you need
5 to do, but if you're done with the witness, we'll let
6 Mr. Donnelly inquire.

7 MR. MANN: Could I have just a moment?

8 (Pause.)

9 MR. MANN: My only concern is, Judge, he has
10 testified this is an accurate summary of his testimony,
11 Judge, and that summary includes his opinions on a
12 number of issues.

13 MR. DONNELLY: If it makes any difference, your
14 Honor, the Government is satisfied with Mr. Mann
15 putting forward the summary as to -- as an accurate
16 summary of what Professor Leo if allowed to testify
17 would say to the jury. I think the record is covered.
18 I'm not going to argue otherwise.

19 MR. MANN: I'm satisfied, and I have nothing
20 further.

21 THE COURT: That's fine. So let's turn it over
22 to Mr. Donnelly.

23 MR. MANN: May I have just one moment to speak
24 to my client?

25 THE COURT: Sure.

1 (Pause.)

2 MR. MANN: I'm ready to turn it over to
3 Mr. Donnelly. Thank you.

4 CROSS-EXAMINATION BY MR. DONNELLY

5 Q. Good afternoon, Professor Leo.

6 A. Good afternoon.

7 Q. Get the crass part out of the way, I assume you're
8 being compensated for all the work you've done? You've
9 spent hours and hours on this case; is that correct?

10 A. Yes.

11 Q. May I ask how much you're being paid?

12 A. You mean the dollar amount?

13 Q. Yes.

14 A. I've so far been paid \$2500, and I'd say that
15 would be, I don't know, 50 or more hours of viewing and
16 consultation, reading.

17 Q. Are you charging an out-of-court consultation rate
18 or hourly rate?

19 A. I'm not charging. I'm just doing this almost out
20 of curiosity and interest.

21 Q. Why have you gotten \$2500? How did that come
22 about?

23 A. Well, Mr. Mann and I -- he said he would like to
24 be able to get me some money for what I'm doing, and I
25 said that's fine. But we didn't even discuss an actual

1 figure.

2 Q. And not an hourly figure?

3 A. No.

4 Q. You plan on invoicing him for further hours once
5 this is all done?

6 A. Something funny happens to a brain when you
7 retire, you know. I have enjoyed this, working with
8 Bob and also just an interesting topic.

9 Q. Is that a yes or no? I asked you if you're going
10 to ask him for more money when this is all over. Is
11 that yes or no or you don't know?

12 A. You know, I haven't even thought of that.

13 Q. Professor Leo, have you ever testified in any
14 court before as an expert?

15 A. No.

16 Q. So this is a first-time experience for you.

17 A. When I was an undergraduate, I was frequently
18 brought in as a mock witness at the law school trials.

19 Q. Have you ever in the course of your professional
20 career worked with law enforcement in any capacity?

21 A. No.

22 Q. I saw some of the items that Mr. Mann had you
23 review prior to coming here today. Some of those were
24 legal materials I think relating to the definition of
25 child pornography; is that correct?

1 A. Yes.

2 Q. Prior to that, did you have any knowledge about
3 the laws on child pornography in this country?

4 A. Well, yes. I've also published on Robert
5 Maplethorpe. I've published on other aspects of
6 pornography. And it's part of a research component.
7 Inevitably, I've done research in gender studies,
8 specifically gay/lesbian studies, things of that sort
9 where charges of pornography were a lot more frequent
10 just in the last decade or two.

11 Q. Do you have a particular thesis or belief about
12 the validity of the child pornography laws?

13 A. From my perspective, and with regard to child
14 pornography, one thing that I'm struck by is that it's
15 not relatable to other kinds of definitions of
16 pornography. It's -- I know that it's a very
17 restricted area, but other than how it's specifically
18 argued, the only experience I've come across is the
19 literature that I've read. It's not an actual area for
20 me for specialization. It's part of a general area
21 that I have. In fact, I write books and do stuff on
22 film, and pornography is inevitably a genre.

23 Q. Pornography involving adults?

24 A. Duke University Press has a journal out there
25 called "Porn Studies." Porn regardless of what people

1 think about it as a behavior or as an attitude or as a
2 cultural experience or a product, it is legitimate from
3 an academic point of view to be examined, critiqued,
4 appraised, evaluated, how it's produced, who it affects
5 and so forth. It's a legitimate area for film
6 research.

7 Q. Would you consider pornography to be an expertise
8 of yours?

9 A. In the sense that it's in the field of genre
10 studies and gender studies, I would say it's part of my
11 expertise.

12 Q. Have you written on pornography? When I use the
13 word "pornography," I'm referring to pornography where
14 the subjects are adults.

15 A. I didn't hear.

16 Q. Have you written on adult pornography?

17 A. Yes.

18 Q. Is that in the Duke journal or --

19 A. I was invited to be a guest lecturer, humanities
20 lecturer at the University of Pittsburgh. That was
21 several years ago. I've had --

22 Q. I guess my question was have you written on it,
23 and your answer is, yes, I wrote for the University of
24 Pittsburgh?

25 A. No. I'm just thinking that in academic terms if

1 you've given a lecture, that's a publication. One of
2 my publications proper was on gay male depiction in
3 American television melodrama, which was published in
4 the Journal of South Atlantic Quarterly. That was also
5 republished in a book put out by Duke University Press
6 called "Displacing Homophobia." And --

7 Q. Have you studied, for lack of a better term,
8 phenomenon or movement known as nudism or naturism?

9 A. Movement?

10 Q. I don't know what to call it. You testified about
11 naturists on your direct examination, and there are
12 people who believe in that as a lifestyle; is that fair
13 to say?

14 A. On the topic itself of nudity, naturalism, nudism,
15 no, I have not written on that as a topic inasmuch as
16 it's an attitude or a social movement or a phenomenon
17 that affects how people perceive human bodies, human
18 bodies is a major area of my concern and research. So
19 nudism per se precisely, no. But on how physicality is
20 measured, how it's perceived, how it's evaluated
21 differently among different cultures is an area of my
22 expertise.

23 Q. Are you a part of any nudist or naturist groups or
24 organizations?

25 A. No.

1 Q. I want to show you if I could some news articles
2 that I've had marked as Government's Exhibits 1, 2, 3
3 and 4, and I just had one question for you about these
4 Professor Leo, and that is have you seen any of those
5 before?

6 THE COURT: Let's mark them something else since
7 these are 1 through 5. Let's make them A through D.

8 MR. DONNELLY: Sure.

9 THE COURT: Are there four or five?

10 MR. DONNELLY: Just four, your Honor.

11 (Government Exhibits A through D admitted for
12 ID.)

13 Q. Just showing you Government's A through D, can you
14 just look at the headlines. Look through them.
15 They're stapled together. I represent to you they're
16 news articles I printed off the Internet. Can you just
17 tell me whether or not you've seen them?

18 A. Actually, I do know about this bust because it's
19 been in the news a lot. The Toronto Star. Yes, I'm
20 aware of that. Let's see this other one here.

21 Q. You're looking at B?

22 A. This is Exhibit B and this is from the Star, I
23 guess, also, fairly recently. This hit the news, I
24 think, child pornographer's letter to his victim.

25 Some of the stuff I've heard on national public

1 radio and other venues.

2 This Exhibit C, "Child Porn Bust, How One Man
3 Seduced an Entire Village," I think I've seen this
4 referenced or heard this being referenced in the Star.
5 The Star actually had a series of a lot of coverage on
6 this, and I was -- and that was my sole exposure to it.
7 The Globe and Mail, this is Exhibit D, "348 People
8 Arrested in Child Porn Case Connected to a Canadian
9 Firm." And it's focused on Azov Films rake in 4
10 million and I guess --

11 Q. Have you read any of these articles that you can
12 recall?

13 A. No, not these in particular. I read maybe a week
14 or so ago there was an article in the Star that I had
15 heard about on radio except that I have not read the
16 whole -- the whole bucket I have not read.

17 MR. DONNELLY: Your Honor, for purposes of this
18 hearing I would move these exhibits full.

19 THE COURT: Any objection, Mr. Mann?

20 MR. MANN: Not for this hearing, no.

21 THE COURT: All right. Those will be full, A
22 through D.

23 (Government Exhibits A through D admitted in
24 full.)

25 Q. So Professor Leo, it seems to me you've studied

1 the cultural role and presence of adult pornography,
2 but would it be fair to say that -- do you know much
3 about the world of child pornography?

4 A. Actually, yes. I've been following the whole
5 career of Sally Mann, who is a prominent figure and
6 very controversial. Also, I've given seminars and
7 papers on Robert Maplethorpe and that's going back
8 several years. What they have in common, of course, is
9 that they're photographers and award-winning
10 photographers. I think it was Time magazine that said
11 of Sally Mann that she's America's most important
12 photographer. And I've heard her here at RISD last
13 year.

14 Q. Does Sally Mann's work depict adults having sex
15 with children and that sort of thing?

16 A. I've never seen anything that I would call sex
17 between an adult and children.

18 Q. Are you aware that there is an underground economy
19 in the production, distribution and possession of
20 images and videos that depict children engaged in
21 sexually explicit conduct?

22 A. Yes. I'm aware that that exists. I'm also aware
23 that pornography is a multi-billion dollar industry.

24 Q. We want you to be very careful here, Professor.
25 I'm not referring to adult pornography. We're talking

1 about pornography that involves minors. Do you
2 understand that?

3 A. Yes.

4 Q. Okay. And I'm trying to find out what you know
5 about that, what you know about that world outside of
6 Sally Mann and Robert Maplethorpe.

7 A. In terms of specific details, how that underground
8 economy works, all I know about it is stuff that's
9 generally referenced in the context of research
10 articles on pornography. I do not know specifically a
11 lot about that field. And what I do know, again, is
12 general in the context of the whole world of porn,
13 including visual images of all sorts, pictures.

14 Q. Have you ever studied or read scholarly articles
15 or know anything about how adults groom young children
16 to either appear in sexually explicit videos or to
17 engage in sexual activity with adults?

18 A. Studied?

19 Q. Do you know anything about that, the grooming of
20 young children?

21 A. Very little.

22 Q. Do you believe it happens?

23 A. Oh, I know it happens. Again, if I can elaborate.

24 Q. I'm not asking you to elaborate right now.

25 Mr. Mann can take care of that on redirect examination.

1 MR. MANN: I think he's got to be allowed to
2 explain his answer.

3 THE COURT: You can deal with it on redirect.
4 I'm not sure I see the relevance of this, but I'm going
5 to ask some questions of Mr. Donnelly later about that.
6 Go ahead.

7 Q. Let me ask you some questions about this
8 particular case. We just talked about some news
9 articles that concern Azov Films, right?

10 A. (Witness nods head in the affirmative.)

11 Q. You have to speak your answer for the
12 stenographer.

13 Do you know that? We just spoke about some
14 articles regarding Azov Films, correct?

15 A. I saw the name, Azov, in one of the articles.

16 Q. And you know what the connection of Azov Films is
17 to this case involving this Defendant, Jerry Silva?

18 A. Just from the very general stuff I've gleaned from
19 the Star. And also, with regard to Azov Films, I've
20 looked at a number of catalogs as part of the materials
21 that your office has. I know the nature of what they
22 do.

23 Q. Okay. Before coming here today, besides knowing
24 the nature of it, did you take any active steps to
25 research Azov Films as a film distributor?

1 A. Actually, I did. When we were watching the films,
2 I made notes of like Peter P Productions. I made notes
3 of everything else that I found on the covers, the
4 covers for the DVDs. I looked up and then I tracked
5 when I was looking through the evidence on the other
6 seized materials, including the box of DVDs having
7 nothing to do with Azov Films, but also the catalogs.

8 What I did was I did research and a little bit
9 on how the distribution came to be. And I didn't
10 follow through a lot on that, but I did note that at
11 one point the distribution arm as Azov was separated
12 from the production part.

13 Q. What did you find out about how these films, all
14 the films you watched, what did you find out how they
15 were being produced? In other words, who was filming
16 them? Who were these great cameramen you told us about
17 on direct examination?

18 A. If I may correct your statement. I do not think
19 the cameramen are great. In fact, my summary judgment
20 on these films is that they're at the level of home
21 movies.

22 Q. Okay. There's nothing sophisticated about these
23 movies, was there, the way they were made?

24 A. That's a loaded term, and I think it's pretty
25 subjective.

1 Q. Okay. Well, let me ask you a different way. Do
2 you know who was running Azov Films in Canada? Did you
3 find that out?

4 A. No. I made some effort to find out who. I was
5 thinking just trying to find out how much I could about
6 a production company that was involved with this kind
7 of work because it also had in the seized materials,
8 there was evidence that Azov Films put out all kinds of
9 other material that had a world-wide distribution, that
10 they have films out there on families who are nudists
11 or naturists, and I guess that came with the evidence.
12 So I was pursuing that a little bit just to see how
13 extensive the outfit was.

14 Q. Did you learn about Igor Rusanov, a Russian
15 producer that sent films to Azov?

16 A. No. I had notes on some -- that one doesn't ring
17 a bell. I did have notes on Peter P Productions was
18 one that was a distributor but --

19 Q. Did you know that Mr. Rusanov created camps for
20 these little boys and these boys came from low income
21 homes, and he would have the boys go there at low or no
22 cost and that's where a lot of the filming was done?
23 Did you know that?

24 MR. MANN: I know this is a preliminary hearing,
25 but I can't imagine that evidence coming in at a trial.

1 THE COURT: Well, I don't know if Mr. Donnelly
2 intends to introduce it or not but that's a different
3 question. I think for purposes of this hearing I think
4 the question is appropriate so I'll allow it. Go
5 ahead.

6 Q. Whether you knew the involvement of an Igor
7 Rusanov -- and that's R-U-S-A-N-O-V -- did you know
8 that one of the producers of these films, the actual
9 makers of these films had created camps for boys where
10 the boys would be there without their parents, without
11 their families?

12 A. No. The only thing I know about the camps is when
13 they referred as to like the KKK Ranch and material
14 like that. That was with the materials, but I didn't
15 pursue that. Igor Rusanov does not ring a bell with
16 me.

17 Q. One of the articles I showed you was an article
18 that talked about a child pornographer's letter to his
19 victim, and it's letter from Markus Roth. Had you come
20 across the name Markus Roth in your research on Azov
21 Films?

22 A. I wasn't -- I was just trying to get a general
23 sense of how the distribution, how and why, because I
24 was perplexed that if these were really pornographic --

25 THE COURT: Professor, he's just asked you

1 whether you came across the name of Mr. Roth. Did you
2 ever come across that?

3 THE WITNESS: No.

4 THE COURT: Okay.

5 Q. It's your opinion, as stated in your summary, that
6 you don't think what you saw in these videos amounts to
7 child pornography, correct?

8 A. Yes. I do not think it meets a standard of
9 pornography in any sense.

10 MR. DONNELLY: One moment, please, your Honor.

11 THE COURT: Sure.

12 (Pause.)

13 Q. Do you know why people were buying these movies
14 from Azov Films?

15 A. You've asked an impossible question, and it's
16 loaded. I don't know why.

17 Q. In your expertise, what are some of the reasons
18 that adult men -- do you know that all the purchasers
19 of these movies were adult men?

20 A. You're already making a judgment on who bought
21 them. I do not know who bought them.

22 Q. If I represent to you that the vast majority of
23 the purchasers of the movies were like Defendant --

24 THE COURT: Mr. Donnelly, you asked him do you
25 know why people would buy these films, and he just

1 said, "I don't know why people would buy these films."

2 Q. Do these films seem to have any purpose to you as
3 an expert in the area of film for the purchase of these
4 films than the sexual pleasure of the person purchasing
5 and viewing the film?

6 A. I think they have other purposes that are
7 possible, mainly because I looked at the seized
8 evidence and looked at the nature of the catalogs put
9 out by Azov Films, including those that are
10 family-oriented.

11 Q. Do these films, the ones that you saw that are
12 part of the indictment that Mr. Mann oriented you to,
13 did any of those focus on families?

14 A. No.

15 Q. In fact, you hardly see any adults at all in these
16 films; isn't that correct, Professor?

17 A. Yeah. There are maybe three or four instances,
18 including an interview that was a good interview in my
19 estimation; but no, on the other hand, I don't see
20 human beings in the world of Walt Disney often,
21 cartoons.

22 Q. Do you know -- would it make any difference to
23 your opinion as to whether these images and videos
24 amount to child pornography to know that the boys
25 involved were lied to by the person taking their

1 pictures, that lies were told to them that the pictures
2 would never be shown to anybody? Would that make a
3 difference to you if the boys were manipulated in that
4 way?

5 A. Let me say, first off, the question makes no sense
6 because the videos themselves are memories of -- it
7 struck me that in the promotional materials that were
8 with every video, trailers, that it seemed evident to
9 me that they were meant for distribution and to unknown
10 viewers. I don't know who those viewers would be.

11 Q. Is it your position that you think the boys knew
12 that?

13 A. Maybe it was a wrong impression but that is the
14 impression I had, that these boys knew that their
15 videos were being made and they were playing to the
16 camera.

17 Q. Were you aware that Markus Roth, the primary
18 filmer of the Rumanian scenes, was prosecuted by
19 Rumanian authorities and went to prison for two years
20 for making some of the videos you watched? Were you
21 aware of that?

22 A. No.

23 Q. Would that affect your opinion at all about how
24 these films fit into the general sort of accepting
25 culture of European nudism?

1 A. I took at face value the statement that prefaced
2 every video that we saw that they pass muster with the
3 Canadian Supreme Court and so forth.

4 Q. What are you referring to? Tell the judge what
5 you're referring to.

6 A. There were actually "V████████████████████ Remembered." Let's
7 see. One of the last ones we saw the other day -- I've
8 got them right here. Here we are. "FKK Ranch."
9 "Party Games." "Peter P Productions." There was a
10 bonus disk. And the -- there was prefatory -- a
11 rolling commentary.

12 Q. Just so I can quickly summarize it for the Court,
13 the rolling commentary says: These are pictures of
14 scenes from naturist and nudist locations. Things
15 along that line; is that correct?

16 A. You're mixing the different kind of commentaries.
17 The one that struck me was the one that said that there
18 was nothing wrong with these films or productions in
19 Canada, that they met with all the regulations and were
20 compliant with.

21 Q. Surely, Professor, if a child pornography video
22 has a preface with printed comment that says this video
23 is legal and has been approved by the highest court in
24 the land, that doesn't necessarily make it legal, does
25 it?

1 A. It makes it about as legal as "Any resemblance to
2 anybody living and dead in this film is purely
3 coincidental." It's something that goes with the
4 formula.

5 Q. Do you know if the parents of these boys who
6 appear in these films knew that they were being asked
7 to strip naked and be videotaped?

8 A. Their parents might know it if they were at any of
9 the public scenes.

10 Q. Do you know one way or another whether or not they
11 were?

12 A. No.

13 Q. Would it surprise you to know that the parents
14 were not told? And in fact, Mr. Roth, who was arrested
15 in this case was only arrested when he was confronted
16 by two of the boys' fathers who discovered the nude
17 videotaping going on. Would that surprise you?

18 A. In light of the way that they were packaged and
19 presented and in light of the fact that there was no
20 sexual content that I could see, I would be surprised.

21 Q. Would you be surprised if Mr. Roth told the boys
22 if they were ever asked by the police about whether or
23 not they appeared naked in films for him, to lie to the
24 police and tell them that they did not. Would that
25 surprise you?

1 A. Well, it surprises me now because I think it's
2 reprehensible, but I did not know that.

3 Q. Would it change your opinion as to whether or not
4 these videos are of child pornography if they are being
5 produced under those conditions and with those
6 instructions to the boys?

7 A. I think that the notion of pornography here that I
8 was paying attention to and be guided by had only to do
9 with content. I was not aware of the allegations that
10 you're making and therefore --

11 Q. In general, that's what I'm asking you is what
12 were you aware of and --

13 A. But you're asking me would it change my mind about
14 these films, and I would say not in terms of the
15 content.

16 Q. Okay. Now, as far as the content goes, can we
17 agree that these movies, they really have no plot,
18 correct?

19 A. That's incorrect.

20 Q. Is there any dialogue?

21 A. Yes, there was.

22 Q. There is? Between the boys?

23 A. Yes.

24 Q. Would it be fair to characterize the films as
25 having one nude scene after another of the boys doing

1 various activities, some of which you described on
2 Direct?

3 A. Repeat that, please.

4 Q. Would it be fair to describe the movies as kind of
5 flowing from one scene to another where the boys
6 appear, remove their clothing and then engage in some
7 of the activities that you described earlier?

8 A. There were some scenes where they were not robing
9 or disrobing. They were already like swimming or in
10 the water. And you mentioned flowing, that these
11 things are flowing. Let me tell you that I think you
12 have a naive view of what a story or a narrative is.
13 In fact, one of the DVDs --

14 Q. I'm sure you could educate me a lot about the
15 films.

16 A. Knowing what a story is. You said they had no
17 structure or story.

18 Q. You mentioned that there was no sexualized
19 behavior in these videos that you saw; is that correct?

20 A. Yes. I didn't see anything -- but there are
21 people who see the bee behind every flower. I didn't
22 see any sexualized behavior.

23 Q. Did you see yesterday when you came to my office
24 and reviewed the last few video disks, was there a
25 scene where boys bound or tied up one of the other

1 boys?

2 A. That was part of the frivolity of that whole
3 scene.

4 Q. Did you see any sexuality in that at all, even if
5 the boys didn't intend it?

6 A. No. In fact, my overwhelming impression of that
7 whole scene was that it was one of the ones that
8 underscored mostly the spontaneous nature and
9 unpredictability and playing with props. It was
10 horsing around.

11 Q. Okay. What about -- you saw several scenes where
12 boys rubbed oil on each other, in the sauna pool scenes
13 in particular?

14 A. Yes.

15 Q. Is that right? That wasn't sexual to you at all?

16 A. No. It needn't be. You're asking questions that
17 in some respects invite -- these are yes or no, and I
18 understand why you're doing that, but I don't know what
19 you mean by "sexual nature" when you say rubbing with
20 oil. Could you clarify for me.

21 Q. You were the one who testified on Direct Exam that
22 there was no -- I'm trying to remember your phrase you
23 used, that there was no sexualized behavior. And when
24 the director of a movie, whoever it is, the person
25 behind the camera is telling these boys to rub oil, one

1 rub oil on the other, do you find that to be sexualized
2 behavior particularly to the purchasers of these
3 movies, the men who are buying them?

4 A. You're asking a string of multiple questions.
5 First off, I don't see a massage with oil as sexualized
6 activity, and you're now asking me to -- if I know
7 about somebody telling them where to put the oil and
8 how to put the oil. That wasn't in the content.

9 THE COURT: Well, let me interject here. For
10 purposes of this hearing, what is important to me is
11 the why of your answer to the question that you don't
12 see that activity as sexualized behavior. It doesn't
13 really matter whether Mr. Donnelly thinks it is or
14 isn't and what his definition is.

15 At this hearing, I'm interested to know why you
16 don't think it is. What's the basis of that?

17 THE WITNESS: It does not seem to me to have any
18 gestural content, any physical content the purpose of
19 which is to arouse, seduce or somehow inspire some kind
20 of sexual feeling and/or wanting to have a sexual
21 outcome. It's a massage theme. It just doesn't do
22 that -- it doesn't meet that kind of level of
23 sexualized behavior. I don't understand --

24 THE COURT: Let me follow-up. Do you mean among
25 the actors themselves? So it isn't sexualized as

1 between the two or three or how ever many boys are
2 engaged in this activity? Is that what you're saying?

3 THE WITNESS: Yes. In fact, the fellow and I
4 think two fellows who massage and -- actually, there
5 might be two or three, but the massage is focused on
6 the shoulder area because the camera works in those
7 particular scenes in two different ways. One camera is
8 down right at head level of one of the boys getting a
9 massage. That means that he's lying down already on a
10 bed. And the camera also during that scene, there are
11 actually two, also pans in a circular way the entire
12 scene, and you only see massaging in the upper back
13 area and there's nothing else that I recall of any kind
14 of sexual nature that's evident in that, much less
15 something that's -- I can't understand that being
16 sexually provocative or intended to be sexual or to
17 create a sexual desire. I just don't --

18 THE COURT: Okay. I understand your answer.
19 Thank you.

20 **Q.** Do you have any opinion about whether or not such
21 a scene would create sexual arousal in the viewer or
22 the purchaser of the DVD disk?

23 THE COURT: He's already testified that he
24 doesn't know what's in the mind of the viewers and
25 so -- by the way, I take that to mean that he is not

1 being offered in order to give an opinion on that
2 point. And I'm going to talk to you two about these
3 issues later, but he's not being offered for that
4 purpose.

5 MR. DONNELLY: Could I just have one second,
6 your Honor.

7 (Pause.)

8 MR. DONNELLY: That's all I have. Thank you,
9 your Honor.

10 THE COURT: Okay. Do you have any follow-up,
11 Mr. Mann?

12 MR. MANN: Just a few quick questions, I think.

13 THE COURT: All right.

14 **REDIRECT EXAMINATION BY MR. MANN**

15 Q. You were asked a question about grooming. What do
16 you know about grooming? You were asked a question
17 about the phrase "grooming" in relation to grooming
18 people, grooming children. Do you remember that
19 question?

20 A. Grooming?

21 Q. Mr. Donnelly asked you a question about --
22 something to the effect of were you familiar with
23 adults grooming children, or something like that.

24 What do you understand that to be?

25 A. No. I was not aware of anything like that, that

1 allegation.

2 Q. But you know what grooming is, don't you?

3 A. Grooming means basically that you're training
4 somebody to -- like you groom somebody to play a
5 certain part.

6 Q. Now, you were asked a question about whether there
7 was a plot to these movies. Was there a plot?

8 A. That's -- at first glance, it seems like these
9 movies don't have a plot, that somehow for something to
10 be a story or a narrative that it must have a plot. I
11 would say that these films, I don't see them
12 necessarily having a plot. What I do see them having,
13 however rudimentary, what we might call a structure.

14 To clarify that, many of Andy Warhol's movies
15 don't have a plot. He might have a camera and he just
16 aims it and people pass back and forth in front of it.
17 One of the things we first saw, "V█████████ Remembered,
18 Volume I," by definition, by definition that title
19 means that somebody is being remembered. That is that
20 there's a biographical intent or an activity here.
21 You're trying to revive and/or present shards or
22 elements of the memory of somebody. That is a
23 narrative. It might be shapeless, but it is -- but
24 James Joyce's "Ulysses" is in many respects shapeless.
25 That does not mean it's without narrative structure.

1 MR. MANN: Nothing further.

2 THE COURT: I want to ask you one question that
3 goes back to your opinion that these films do not have
4 a seductive or a sexualized nature to them. There are
5 two sides to that question. One is the one
6 Mr. Donnelly was about to ask you about and I stopped
7 him because you said you don't know what's in the mind
8 of the people buying these films; the other side of
9 that is the maker of the film.

10 Can you tell from what you observed in the
11 making of the film, maybe you said you don't know this,
12 anything about the intent of the maker of the films,
13 the filmer in making the film as to whether he desired
14 or intended to evoke sexual feelings or sexual
15 responses in the viewer? It's fine if you can't.
16 It's just yes, no, or I don't know, I guess.

17 THE WITNESS: First off, I was expecting to see
18 something that would have some kind of sexual content,
19 sexual nature, and I was dumbfounded because I kept on
20 coming up that these are really like home movies.

21 You raised, your Honor, an interesting question
22 and that is what is the director or producer of these
23 films, that there might be a marketing intent, that he
24 might have a targeted audience. That would be how the
25 set director understands his audience. And from what

1 has been said, I can see now the possibility that these
2 films could be intended to be sold to people who would
3 view them intently or intentionally with a sexual bias
4 or with a sexual purpose.

5 This is one thing that everybody is going to be
6 wondering. Like, how do I justify my opinion? How
7 does so and so justify an opinion? In my opinion,
8 looking at the content and evaluating it by criteria
9 that go into the production and reception of films, I
10 do not see anything where there's an emphasis or
11 something that is unambiguously sexualized or has a
12 sexual purpose. That's what puzzled me when I saw
13 these films. And in fact, they're almost boring.

14 THE COURT: All right. Well, thank you very
15 much. You may step down.

16 THE WITNESS: Thank you, your Honor.

17 THE COURT: So, Counsel, we have a bit of a
18 problem, which is I have a meeting at four o'clock and
19 that is five minutes. While I don't think we need a
20 lot of time for you to argue on this motion and the
21 other motions, we can't get it done in five minutes and
22 I can't keep that meeting waiting.

23 So what I'd like you to do is if it's possible
24 in your schedules for you to come back tomorrow at
25 2:30, and we'll do the argument at that time and I'll

1 hopefully make my rulings. Can you both do that?

2 MR. MANN: The only reason I have any
3 hesitation, Judge, is I have not been able to figure
4 out what one of the courts is doing that I was supposed
5 to be in today that was closed today and whether
6 they're running that calendar tomorrow. One of the
7 courts we figured out. The other one we haven't been
8 able to figure out. I hope that court would understand
9 if I told them I had to be in Federal Court to continue
10 a hearing. I would ask your indulgence. I might have
11 to be in New Bedford. I won't know that until tomorrow
12 morning, apparently.

13 THE COURT: Well, if it becomes something you
14 can't avoid, then I have between -- we can go off the
15 record.

16 (Discussion off the record.)

17 (Court concluded at 4:00 p.m.)
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C E R T I F I C A T I O N

I, Anne M. Clayton, RPR, certify that the foregoing is a true and correct copy of the transcript originally filed with the clerk on September 16, 2014, and incorporating redactions of personal identifiers requested by the following attorney of record: Robert B. Mann, in accordance with the Judicial Conference policy. Redacted characters appear as a black box in the transcript.

/s/ Anne M. Clayton

Anne M. Clayton, RPR

October 16, 2014

Date